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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/18/2003

33

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/491,639

Applicant(s)

BLUCHER, TIMOTHY L.

Examin r

Stephen J. Castellano

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-- The MAILING DATE f this communicati n appears on the c ver sheet with the corresp ndence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,11,13-19 and 28-41 is/are pending in the application.
- 4a) Of the above claim(s) 6,7 and 13-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 11 and 28-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. Claims 6, 7 and 13-19 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5 and 8.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9 and 30-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler.

Binks discloses a pan liner system for forming an improved barrier between a pan and food disposed therein, the system comprising: a pan (11) and a drop-in polymeric (polytetrafluoroethylene (TFE)) pan liner (10) having a contour fit, the pan having a bottom panel and four side walls and a pan top opening and the liner having a wavy shape and somewhat resistant to conformance to the confronting surfaces of the pan when cold, when heated the liner becomes substantially limp and intimately hugs the surface of the pan as shown in Fig. 2 (see column 5, lines 50-64 and column 6, lines 31-52). Binks discloses the invention except for the contoured bottom edge configuration.

Kugler teaches a liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees, the flat bottom edge with two straight tapered edges is referred to as a satchel bottom. It would have been obvious to modify the shape of the Binks

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liner to have the flat bottom edge and two straight tapered edges in order to provide a contoured liner which provides the liner with a neat appearing square or rectangular shaped bottom when filled and to provide a method of forming a satchel bottom liner which lends itself to economical mass production and which otherwise overcomes noted and other shortcomings that result in using paper bag manufacturing techniques in the production of this type of liner.

Claims 11, 28, 29, 39, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler as applied to claim 1 above, and further in view of the M & Q Plastic Products Brochure (the M & Q brochure).

The combination discloses the invention except for the polyamide or polyester material with a 13,000 p.s.i. tensile strength and which is non-blocking. The M & Q brochure teaches a high temperature nylon (polyamide) resin material for bags used in food applications which can withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking. It would have been obvious to replace the liner material of Ibsch or Ferlanti with the high temperature nylon resin in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.

For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-

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polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

Claims 1-5, 9, 11 and 28-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibsch or Ferlanti in view of Kugler and the M & Q Plastic Products Brochure (the M & Q brochure).

Ibsch discloses a pan liner system comprising a pan (10) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (the bottom layer of the plurality of laminations 14) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge (the circular edge that circumscribes the flat bottom), a flexible sidewall extending upwardly from the bottom end (16), an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge (17, 18), the pan liner not having dog ears.

Ferlanti discloses a pan liner system comprising a pan (12) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (10) (the bottom layer of the plurality of laminations) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge, a flexible sidewall extending upwardly from the bottom end, an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge, the pan liner not having dog ears. The pan liner (10) is made from a material comprising plastic and is made of metal with a polytetrafluoroethylene (TEFLON) film (see col. 3, lines 26-33). Regardless of the unsuitability of some plastics as mentioned in column 1, it seems that Ferlanti is rather clear that plastic is quite suitable. Polytetrafluoroethylene is neither fragile or likely to ignite.

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Ibsch and Ferlanti disclose the invention except for the configuration of the contoured bottom edge, the liner isn't a single drop-in type and the liner material isn't high temperature plastic material, with a 13,000 p.s.i. tensile strength which is non-blocking.

Kugler teaches a single drop-in type liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. It would have been obvious to modify the shape of the Ibsch and Ferlanti liners to have the flat bottom edge and two straight tapered edges in order to provide a contoured liner which provides the liner with a neat appearing square or rectangular shaped bottom when filled and to provide a method of forming a satchel bottom liner which lends itself to economical mass production and which otherwise overcomes noted and other shortcomings that result in using paper bag manufacturing techniques in the production of this type of liner. It would have been obvious to modify the liner to be a single, drop-in type in order to provide the quick and reduced manipulation assembly which eliminates the step of tucking the free edge of the open mouth of the liner beneath the upper edge.

The M & Q brochure teaches a high temperature nylon resin material for bags used in food applications which can withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking. It would have been obvious to modify the liner material of Ibsch or Ferlanti with the high temperature nylon resin liner in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.

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For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

Druin Declaration

The declaration under 37 CFR 1.132 filed March 3, 2003 is insufficient to overcome the rejection of claims 1, 32, 34 and 36 based upon the rejection of claims 1-5, 9 and 30-37 under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler, the rejection of claims 11, 28 and 29 under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler as applied to claim 1 above, and further in view of the M & Q Plastics Products Brochure, and the rejection of claims 1-5, 9, 11 and 28-37 under 35 U.S.C. 103(a) as being unpatentable over Ibsch or Ferlanti in view of Kugler and the M & Q Brochure as set forth in the last Office action because: The declaration fails to set forth facts and the showing is not commensurate in scope with the claims.

The declaration lacks evidence of criticality or unexpected results, commercial success, long-felt but unresolved needs, failure of others, skepticism of experts or any other evidentiary showing. The declaration generally sets forth the opinion of Dr. Melvin Druin of Avon-by-the-

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Sea, New Jersey that the invention would not have been obvious. Dr. Druin is a consultant who is paid by M & Q Plastic Products, the assignee of this application.

There is no detailed discussion of even one 103 rejection where the motivational statement is considered and the motivation is rebutted with reasoned argument. In paragraphs 14-16, the declarant discusses the Binks and Kugler references. The declarant states that Binks is merely a sheet. The examiner views Binks' liner as a bag because a depression is formed such that the liner is in intimate contact with the pan when heated. The declarant further states that Binks doesn't disclose a contoured bottom edge. The examiner disagrees, the bottom edge of Binks is contoured insofar as a flat bottom edge is contoured. The contoured bottom edge of Binks lacks the contoured edges extending upwardly and outwardly from the flat bottom edge.

Handley Declaration

The declaration under 37 CFR 1.132 filed August 30, 2002 is insufficient to overcome the rejection of claims 1, 32, 34 and 36 based upon the rejection of claims 1-5, 9 and 30-37 under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler, the rejection of claims 11, 28 and 29 under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Kugler as applied to claim 1 above, and further in view of the M & Q Plastics Products Brochure, and the rejection of claims 1-5, 9, 11 and 28-37 under 35 U.S.C. 103(a) as being unpatentable over Ibsch or Ferlanti in view of Kugler and the M & Q Brochure as set forth in the last Office action because: The declaration fails to set forth facts and the showing is not commensurate in scope with the claims.

The declaration lacks evidence of criticality or unexpected results, commercial success, long-felt but unresolved needs, failure of others, skepticism of experts or any other evidentiary showing. The declaration generally sets forth the opinion of Mr. Michael Handley of Arlington, Texas that the invention would not have been obvious. Mr. Handley is employed by M & Q Plastic Products, the assignee of this application. M & Q Plastic Products and Mr. Handley would benefit from an allowed application and the subsequent patent.

The declaration substantively discusses the merits of the claims in paragraph No. 8 and refers to claims 1, 32, 34 and 36 in the first sentence. Subparagraph 8B discusses Binks, subparagraph 8C discusses Kugler, subparagraph 8D discusses Ibsch, Jr. and Ferlanti and subparagraph 8E discusses the product brochure. Each of subparagraphs 8B, 8C, 8D and 8E individually discusses the references and what each reference lacks with respect to the claimed invention. This implies that each reference doesn't by itself anticipate the invention. A fact already assumed since no anticipatory rejection is currently of record. There is only discussion in general terms that the references can not be combined.

There is no detailed discussion of even one 103 rejection where the motivational statement is considered and the motivation is rebutted with reasoned argument.

The declaration substantively discusses the problem which applicant seeks to solve in subparagraph 8A. The problem is defined as: The trapping of food in the pockets formed in the corners of the bag-shaped liner, the trapped food causes waste. Ibsch, Jr. and Ferlanti solve the problem. These reference disclose the combination of a pan and liner, the liner having a preformed bag-shaped liner with no pockets formed in corners of the bag.

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In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Applicant's arguments filed March 3, 2003 have been fully considered but they are not persuasive. The declaration submitted by Dr. Druin doesn't seem to provide sufficient evidence or a sufficient showing to overturn the prima facie case of obviousness.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

September 25, 2002